

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FOURTH REGION**

ESS SUPPORT SERVICES, LLC  
(f/k/a MISSION ONE EDUCATIONAL  
STAFFING SERVICES LLC)

Employer

and

Case 04-RC-244253

UNITED ELECTRICAL, RADIO AND  
MACHINE WORKERS OF AMERICA (UE)

Petitioner

**REGIONAL DIRECTOR'S DECISION AND  
DIRECTION OF ELECTION**

The Representation Case Rules require an employer to submit a voter list, and normally it must be provided within two business days of the issuance of the Direction of Election, absent extraordinary circumstances. In this case, the Petitioner filed a petition for an election during the off-season for a seasonal employer, so the issue is whether the list must still be provided within two business days. The parties agree that an election should take place in September because the Employer operates a seasonal business during the school year from September to June, but they disagree as to when the voting list is due. Petitioner contends that the voter list is due two days after the direction of election in accordance with the plain language of the Board's Rules and Regulations, while the Employer argues that the voter list cannot be due until a substantial complement of the Unit has been recalled or hired. This issue is not litigable since it concerns the arrangements for the election, so I have resolved this issue administratively and determined that the voter list is due on September 10, 2019, after a substantial complement of the Unit has been hired or recalled.

The Petitioner, United Electrical, Radio and Machine Workers of America (UE), filed a petition on July 2, 2019 seeking to represent the assistants and aides<sup>1</sup> employed by ESS Support Services, LLC (f/k/a Mission One Educational Staffing Services LLC) (Employer). The Employer

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<sup>1</sup> At hearing, the parties entered a Stipulation that more accurately describes the appropriate unit as defined below.

provides daily, long-term, and permanent K-12 services in various school districts, including the Winslow, New Jersey School District, the only district involved herein.

The issuance of the voter list is governed by Section 102.62(d) of the Board's Rules and Regulations which states that absent extraordinary circumstances specified in the direction of election, the employer shall provide a voter list within two business days of the direction of election unless a longer time is specified in the direction. Since a representative complement of the unit will not be recalled or hired until September 2019, I will direct that the voter list be provided by September 10, 2019. I find extraordinary circumstances exist to justify deferring the due date of the voter list because Petitioner filed this petition during the off season when only 20-25% of the unit is employed and the Employer cannot generate an accurate voter list until a full complement has been recalled or hired.<sup>2</sup> I am not setting an election date at this time because the location for the election has not yet been determined. However, I am setting the payroll eligibility date for the election as September 6, 2019, because that is the first payroll ending date after the beginning of the new school year, so a full complement of employees for the school year will have been hired by then. I have accordingly set September 10, 2019 as the due date for the voter list because it is two business days after the payroll eligibility date.

A hearing was held before a Hearing Officer of the National Labor Relations Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Based upon the entire record in this matter and for the reasons set forth below, I conclude and find as follows:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner is a labor organization that claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The parties stipulated, and I find, that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time Non Instructional Assistants, Teacher Assistants, Bus Aides, Before & After School Program Attendants, Extended School Year Non Instructional Assistants, and

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<sup>2</sup> At the hearing, Petitioner's counsel acknowledged that the voter list may be incomplete if required to be furnished within two days.

Extended School Year Teacher Assistants employed by the Employer in the Winslow, New Jersey School District; **excluding** all office clerical employees, Substitute Non Instructional Assistants, Substitute Teacher Assistants, Before & After School Program Supervisors, managerial employees, professional employees, guards and supervisors as defined in the Act, and all other employees.

### **ELECTION**

The Board's Casehandling Manual (Part Two) Representation Sec. 11302.1, provides that, "An election should be held on the earliest date practicable consistent with the Board's rules." The Board's policy is to direct elections involving seasonal employees at or near the peak of the season in order to provide as many voters as possible with the opportunity to cast their ballots; however, the Board must balance the goals of ensuring maximum employee participation in the election and permitting current employees to have representation as quickly as possible. *Saltwater, Inc.*, 324 NLRB 343, 344 (1997); *Elsa Canning Co.*, 154 NLRB 1810, 1812-1813 (1965).

During the hearing, the parties stipulated that the Employer's operation is seasonal, and that only 20 to 25 percent of the full complement of about 216 employees are employed during the summer season. The parties further agreed that the election should be held in September 2019. Accordingly, I conclude that the election will be deferred until September 2019, after a representative complement of employees has been recalled and/or hired by the Employer. *Bogus Basin Recreation Assn.*, 212 NLRB 833 (1974).

### **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by **United Electrical, Radio and Machine Workers of America (UE)**.

#### **A. Election Details**

The election will be held at a date, time and place to be determined by the Regional Director.<sup>3</sup> The date, time, and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

#### **B. Voting Eligibility**

Eligible to vote are those in the unit who were employed during the payroll period ending **September 6, 2019**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

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<sup>3</sup> As the school district has not consented to hold the election on school premises, I will issue the Notice of Election after securing an alternative location for the election.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

### C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters. To be timely filed and served, the list must be *received* by the Regional Director and parties by September 10, 2019, when it reflects the substantial complement of the Unit. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

#### **D. Posting of Notices of Election**

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

#### **RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: August 5, 2019

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**DENNIS P. WALSH**

Regional Director, Region 04  
National Labor Relations Board  
100 E. Penn Sq., Suite 403  
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